

Serial Number: 10/575,473  
Attorney Docket: KAWA3026/ESS

Remarks

Claims 1-13 are in the case. Claims 1-4 remain the same. Claims 5-13 are new claims.

Basis for new claims 5 and 8 is found in the application as filed at page 7, lines 13-17. While quantitative numeric dosages are not disclosed, the composition is a topical so there is a practical limit and repeated applications are appropriate since the composition is extremely safe (see page 7, lines 13-14).

Basis for new claim 10 is found in Example 2. Basis for new claim 12 is found in Example 3.

We turn now to the sole rejection.

Claims 1-4 are rejected under 35 U.S.C. 103(a) as being obvious over JP 2002-308783 (English abstract).

The Japanese application is directed at a pharmaceutical composition for preventing and treating certain skin diseases, regulating the intestines, healing pharyngitis or stomatitis, for a bacteriostatic bath, for suppressing fungal infection and for protection of a wound from infection.

On the other hand, the instantly claimed compositions are cosmetic compositions not pharmaceutical or curative compositions.

It is submitted that the preamble "cosmetic" provides a difference in kind and breathes life and meaning into the claims 1-4. When a difference for the composition claims is in the preamble, the preamble should be given effect when breathing life and meaning into the claim. This provides patentability. See Kropa v. Robie, 88 U.S.P.Q.

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478 (CCPA 1951); In re Paulson, 31 U.S.P.Q.2d 1671 (Fed. Cir. 1994); Bristol-Myers Squibb v. Ben Venue Laboratories 58 U.S.P.Q.2d 1508 (Fed. Cir. 2001); Perkin-Elmer v. Computer Vision, 221 U.S.P.Q. 669 (Fed. Cir. 1994); and Poly-America v. GSE Lining Technology, 72 U.S.P.Q.2d 1685 (Fed. Cir. 2004).

Thus claims 1-4 distinguish the applied Japanese application and are allowable.

So far as claims 5-13 are concerned, the Japanese application fails to teach skin lightening or rejuvenating so claims 5-13 are allowable over the Japanese application.

Respectfully submitted,  
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